

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

AMERICAN PATENTS LLC

Plaintiff,

v.

SEIKO EPSON CORPORATION and
EPSON PRECISION PHILIPPINES, INC.,

Defendants.

Civil Action No. 4:21-cv-00718-ALM

JURY TRIAL DEMANDED

**DECLARATION OF MATTHEW J. HERTKO IN SUPPORT OF DEFENDANTS’
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM UNDER RULE 12(b)(6)
OR, IN THE ALTERNATIVE, TO TRANSFER VENUE
TO THE CENTRAL DISTRICT OF CALIFORNIA**

I, Matthew J. Hertko, declare as follows:

1. I am a partner of the law firm of Jones Day and counsel of record for Defendants Seiko Epson Corporation and Epson Precision Philippines, Inc. in the above-captioned action. I am a member in good standing of the state Bar of Illinois, and I will submit an application *pro hac vice* admission to this Court for purposes of this action. I make this declaration based on personal knowledge and, if called upon to do so, could testify competently thereto.

2. Attached hereto at Exhibit A is a true and correct printout of the Account Status for American Patents, LLC obtained from the website for the Texas Secretary of State by searching “American Patents” at the URL <https://mycpa.cpa.state.tx.us/coa/coaSearchBtn#>, last accessed on December 16, 2021.

3. Attached hereto at Exhibit B is a true and correct printout of the assignment history for U.S. Patent No. 7,088,782, available from the United States Patent and Trademark

Office (“USPTO”) at:

<https://assignment.uspto.gov/patent/index.html#/patent/search/resultAbstract?id=7088782&type=patNum>, last accessed on December 16, 2021.

4. Attached hereto at Exhibit C is a true and correct printout of the assignment history for U.S. Patent No. 7,310,304, available from the USPTO at:

<https://assignment.uspto.gov/patent/index.html#/patent/search/resultAbstract?id=7310304&type=patNum>, last accessed on December 16, 2021.

5. Attached hereto at Exhibit D is a true and correct printout of the assignment history for U.S. Patent No. 7,706,458, available from the USPTO at:

<https://assignment.uspto.gov/patent/index.html#/patent/search/resultAbstract?id=7706458&type=patNum>, last accessed on December 16, 2021.

6. Attached hereto at Exhibit E is a true and correct printout of the assignment history for U.S. Patent No. 6,847,803, available from the USPTO at:

<https://assignment.uspto.gov/patent/index.html#/patent/search/resultAbstract?id=6847803&type=patNum>, last accessed on December 16, 2021.

7. Attached hereto as Exhibit F is a true and correct printout from the webpage found at the following URL: <https://epson.com/For-Work/Wearables/Smart-Glasses/Moverio-BT-350-Smart-Glasses/p/V11H837020>, last accessed on December 16, 2021.

8. Attached hereto at Exhibit G is a true and correct printout from the webpage found at the following URL: <https://epson.com/For-Work/Projectors/Meeting-Room/PowerLite-1288-Full-HD-1080p-Meeting-Room-Projector-with-Built-in-Wireless-and-Miracast/p/V11H978120>, last accessed on December 16, 2021.

9. Attached hereto as Exhibit H is a true and correct printout from the webpage found at the following URL: <https://epson.com/c/Moverio-BT-40S-Smart-Glasses-with-Intelligent-Touch-Controller/p/V11H969120>, last accessed on December 16, 2021.

10. Attached hereto as Exhibit I is a true and correct copy of the specification sheet found at the following URL:
https://mediaserver.goepson.com/ImConvServlet/imconv/ea07add1b62aa56ea948796f4feb479a84d2c8bf/original?assetDescr=PowerLite-1288-Projector_Specification-Sheet-CPD-59278, last accessed on December 16, 2021.

11. Attached hereto as Exhibit J is a true and correct copy of the specification sheet found at the following URL: <https://epson.com/medias/Moverio-BT-40s-Product-Specification-Sheet-CPD-60657-Final.pdf?context=bWFzdGVyfHJvb3R8NTE0Mjk5fGFwcGxpY2F0aW9uL3BkZnxoMzYvaDQ0Lzk2MzIyNzcxMDI2MjIucGRmfDI3Y2ZhYmIxNWFlZGYxYTlmOTRmMmFjNWQ0NmRmOGMzN2RkMGM4MTYyMGU1Mzc1MmU3OTFiM2U0N2MwNjc3NDc>, last accessed on December 16, 2021.

12. Attached hereto at Exhibit K is a true and correct printout of the distance calculation between Tokyo, Japan and Los Angeles, CA provided by Geobytes, Inc., available at <https://geobytes.com/citydistancetool/>, last accessed on December 16, 2021.

13. Attached hereto at Exhibit L is a true and correct printout of the distance calculation between Tokyo, Japan and Dallas, TX provided by Geobytes, Inc., available at <https://geobytes.com/citydistancetool/>, last accessed on December 16, 2021.

14. Attached hereto at Exhibit M is a true and correct printout of the driving distance calculation between Dallas/Ft. Worth International Airport and Sherman, TX provided by

Google Maps, available at

[https://www.google.com/maps/dir/DFW+International+Airport+\(DFW\),+Aviation+Drive,+DFW+Airport,+TX/Sherman,+TX/@33.2674212,-97.1047917,10z/data=!4m14!4m13!1m5!1m1!1s0x864c2a660d222aa7:0x73323f5e067d201c!2m2!1d-97.0403352!2d32.8998091!1m5!1m1!1s0x864c79cc503f06b7:0x8f9e9208cae18551!2m2!1d-96.6088805!2d33.6356618!3e0](https://www.google.com/maps/dir/DFW+International+Airport+(DFW),+Aviation+Drive,+DFW+Airport,+TX/Sherman,+TX/@33.2674212,-97.1047917,10z/data=!4m14!4m13!1m5!1m1!1s0x864c2a660d222aa7:0x73323f5e067d201c!2m2!1d-97.0403352!2d32.8998091!1m5!1m1!1s0x864c79cc503f06b7:0x8f9e9208cae18551!2m2!1d-96.6088805!2d33.6356618!3e0), last accessed on December 16, 2021.

15. Attached hereto at Exhibit N is a true and correct printout of an Expedia Travel search for nonstop flights between Tokyo, Japan and Los Angeles, CA, available at <https://www.expedia.com/Flights-Search?filters=%5B%7B%22numOfStopFilterValue%22%3A%7B%22stopInfo%22%3A%7B%22stopFilterOperation%22%3A%22EQUAL%22%2C%22numberOfStops%22%3A0%7D%7D%7D%5D&leg1=from%3ATokyo%20%28TYO-All%20Airports%29%2Cto%3ALos%20Angeles%2C%20CA%20%28LAX-Los%20Angeles%20Intl.%29%2Cdeparture%3A3%2F7%2F2022TANYT&leg2=from%3ALos%20Angeles%2C%20CA%20%28LAX-Los%20Angeles%20Intl.%29%2Cto%3ATokyo%20%28TYO-All%20Airports%29%2Cdeparture%3A3%2F11%2F2022TANYT&mode=search&options=carrier%3A%2A%2Ccabinclass%3A%2Cmaxhops%3A1%2Cnopenalty%3AN&passengers=adults%3A1%2Cchildren%3A0%2Cinfantinlap%3AN&sortOrder=INCREASING&sortType=PRICE&trip=roundtrip>, last accessed on December 20, 2021.

16. Attached hereto at Exhibit O is a true and correct printout of an Expedia Travel search for nonstop flights between Tokyo, Japan and Dallas, TX, available at

<https://www.expedia.com/Flights->

[Search?filters=%5B%7B%22numOfStopFilterValue%22%3A%7B%22stopInfo%22%3A%7B%22stopFilterOperation%22%3A%22EQUAL%22%2C%22numberOfStops%22%3A0%7D%7D%7D%5D&leg1=from%3ATokyo%20%28TYO-](#)

[All%20Airports%29%2Cto%3ADallas%2C%20TX%20%28DFW-Dallas-](#)

[Fort%20Worth%20Intl.%29%2Cdeparture%3A3%2F7%2F2022TANYT&leg2=from%3ADallas%2C%20TX%20%28DFW-Dallas-](#)

[Fort%20Worth%20Intl.%29%2Cto%3ATokyo%20%28TYO-](#)

[All%20Airports%29%2Cdeparture%3A3%2F11%2F2022TANYT&mode=search&options=carrier%3A%2A%2Ccabinclass%3A%2Cmaxhops%3A1%2Cnopenalty%3AN&pageId=0&passengers=adults%3A1%2Cchildren%3A0%2Cinfantinlap%3AN&sortOrder=INCREASING&sortType=PRICE&trip=roundtrip](#), last accessed on December 20, 2021.

17. Attached hereto at Exhibit P is a true and correct printout of the publicly available LinkedIn page of Apurva N. Mody, Ph. D., available at www.linkedin.com/in/apurva-n-mody-ph-d-730a21, last accessed on December 16, 2021.

18. Attached hereto at Exhibit Q is a true and correct printout of the publicly available LinkedIn page of Gordon Stuber, available at www.linkedin.com/in/gordon-stuber-9742a714, last accessed on December 16, 2021.

19. Attached hereto at Exhibit R is a true and correct printout of the publicly available LinkedIn page of Jyri Rauhala, available at www.linkedin.com/in/jyri-rauhala-3b73a5a, last accessed on December 16, 2021.

20. Attached hereto at Exhibit S is a true and correct printout of the publicly available LinkedIn page of Olli-Pekka Lunden, available at www.linkedin.com/in/olli-pekka-lunden-441089a2, last accessed on December 16, 2021.

21. Attached hereto at Exhibit T is a true and correct printout of the publicly available LinkedIn page of Marko Erkkila, available at www.linkedin.com/in/markoerkkila, last accessed on December 16, 2021.

22. Attached hereto at Exhibit U is a true and correct printout of the publicly available LinkedIn page of Paul Hunter, available www.linkedin.com/in/paul-hunter-1766782, last accessed on December 16, 2021.


23. Attached hereto at Exhibit V is a true and correct copy of Table C-5 of the Federal Judicial Caseload Statistics, titled “U.S. District Courts – Median Time Intervals From Filing to Disposition of Civil Cases Terminated, by District and Method of Disposition During the 12-Month Period Ending March 31, 2021,” available at <https://www.uscourts.gov/statistics/table/c-5/federal-judicial-caseload-statistics/2021/03/31>, last accessed on December 16, 2021.

24. Attached hereto at Exhibit W is a true and correct printout of a listing from Docket Navigator of all current and prior litigations in which AP has asserted U.S. Patent Nos. 7,088,782; 7,310,304; and 7,706,458, available at <https://search.docketnavigator.com/patent/patent/60722/1>, last accessed on December 16, 2021.

25. Attached hereto at Exhibit X is a true and correct printout of a listing from Docket Navigator of all current and prior litigations in which AP has asserted U.S. Patent No. 6,847,803, available at <https://search.docketnavigator.com/patent/patent/65520/1>, last accessed on December 16, 2021.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on December 21, 2021


Matthew J. Hertko